

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4577 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIVISIONAL CONTROLLER

Versus

CHATURBHAI VALABHAI PANDER

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Appearance:

1. Special Civil Application No. 4577 of 1997  
MR YS LAKHANI for Petitioner  
MR SUDHANSHU S PATEL for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 19/11/98

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner Divisional Controller, Gujarat State Road Transport Corporation has challenged the order dated 14.3.1996 passed by the Conciliation Officer and Assistant Labour Commissioner, Panchmahals, Godhra refusing to grant permission to dismiss the respondent-workman under the provisions of Section 33 (1) (b) of the Industrial

Disputes Act, 1947.

2. Necessary facts are that the respondent-workman, a conductor applied seeking permission to contest election for the post of Sarpanch on 17.1.1986. The application was rejected by the order of the competent authority dated 29.1.1986. The elections were held on 3.2.1986. The respondent workman successfully contested the election. He held the office of Sarpanch till he resigned on 27.2.1988. The conduct of the respondent workman contesting the election without permission being in breach of section 9 and 37 of the Discipline and Appeal Procedure for the Gujarat State Road Transport Corporation Employees, he was charge-sheeted. An enquiry was conducted and the workman was found guilty of misconduct. Since he had given notice of strike dated 15.6.1987 through the S.T. Karmachari Union, the petitioner Corporation applied for permission to dismiss the respondent workman from service. The Conciliation Officer has declined permission mainly on the following grounds:

- (i) The Corporation did not decide the application of the respondent-workman for contesting the election in time.
- (ii) The respondent workman was not supplied with relevant rules and as such there was violation of principles of natural justice.

3. At this stage, a preliminary objection has been raised by the learned Advocate for the respondent workman that this petition deserves to be rejected on the ground that there is unexplained delay in filing the present Special Civil Application. It is submitted that the impugned order has been passed on 14.3.1996, but the petition has been filed as late as on 30.6.1997 without disclosing any reason for the delay. Learned Advocate submitted that the Counsel for the Corporation took considerable time in sending his opinion. It also took some time at administrative level in obtaining the sanction. In my view, the delay of one year and three months in the facts of the case, is not fatal.

4. So far as the merit of the case is concerned, I am not at all impressed by the reason given by the Conciliation Officer for rejecting the permission application filed by the Corporation. The respondent-workman applied for permission to contest the election on 17.1.1986 and it was rejected on 29.1.1986. If he was serious in obtaining permission, he could have

applied much earlier. He filed nomination without bothering as to whether the Corporation has granted permission to contest the election or not. Therefore, it is clearly a case of breach of sections 9 and 37 of the Discipline and Appeal procedure. So far as the second ground of ignorance of the respondent workman with regard to the Rules of the Corporation is concerned, I am really surprised that an officer of the rank of Asstt.Labour Commissioner would be impressed of such grounds. It is a wholly untenable ground. An employee is expected to know all the relevant rules of the establishment to which he belongs. It is significant to notice that if he was not aware of the Rules prohibiting an employee of the Corporation to take part in political activities, there was no occasion for him to apply for permission to contest the election. The Conciliation Officer has acted illegally in taking the matter pertaining to discipline of public sector very lightly.

5. In view of the aforesaid, this Special Civil Application is allowed. The impugned order dated 14.3.1996 passed by the Conciliation Officer and Asstt.Labour Commissioner is quashed and set aside. The permission application being No.2/87 and I.D. permission No.19/1987 are granted.

Rule made absolute to the aforesaid extent. Interim relief stands vacated.

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msp.